they should insist upon returning it, and taking 90 per cent. cash in its place, the corporation would accept it, and pay that sum. Waiving all question as to the validity of such a contract, the evidence in the case, which is barren of any suggestion as to an extension of the six months originally limited, and which shows the repeated collection of dividends, and the rendering of a statement of merchandise account showing a crediting of the stock to the corporation in settlement of the debt, satisfies me, as it did the master, that, upon the expiration of the six months, the firm elected to keep the stock as payment for the supplies they had furnished.

There is nothing in the proceedings before the Alabama court to prevent a final disposition of this question in this court. Those proceedings were wholly without notice to the other creditors, who here oppose the claim. Moreover, the Alabama court, as did the Illinois court, inserted, in the order whereby it transferred to the present permanent receiver all the property and effects of the corporation in the hands of the temporary receiver it had appointed, a clause providing for the payment of all liens lawfully created or imposed on the property by any order of its own, "as may be hereafter ordered or adjudged, this order being made without prejudice to any existing liens, and without prejudice to any objection or defense thereto." Evidently, the Alabama court did not undertake so to adjudicate upon the corpus temporarily in its hands as to cut off the rights of persons who had no opportunity to be heard before it.

The exceptions to this part of the master's report are overruled, and the claim disallowed. The receiver, however, should return to them the stock which, presumably, they gave up when they received the receiver's certificate.

UNITED STATES v. ELLIOTT et al.

(Circuit Court, E. D. Missouri. October 24, 1894.)

1. CONSPIRACY IN RESTRAINT OF INTERSTATE COMMERCE—WHAT CONSTITUTES.
   A combination by railroad employés to prevent all the railroads of a large city engaged in carrying the United States mails and in interstate commerce, from carrying freight and passengers, hauling cars, and securing the services of persons other than strikers, and to induce persons to leave the service of such railroads, is within Act July 2, 1890, § 1, which provides that every contract, combination in the form of trust or otherwise, "or conspiracy in restraint of trade or commerce" among the states, is illegal.

2. SAME—INJUNCTION—POWER OF CONGRESS TO AUTHORIZE.
   Act July 2, 1890, § 4, which provides that the circuit courts of the United States have jurisdiction to restrain combinations and conspiracies to obstruct and destroy interstate commerce, before such objects are accomplished, is not void for want of power in congress to authorize such proceedings.

3. SAME—INJUNCTION ORDER—PERSONS NOT NAMED IN BILL.
   Under Act July 2, 1890, § 5, an injunction order in an action to enjoin an illegal conspiracy against interstate commerce may provide that it shall be in force on defendants not named in the bill, but who are within

the terms of the order, where it also provides that it is operative on all persons acting in concert with the designated conspirators, though not named in the writ, after the commission of some act by them in furtherance of the conspiracy, and service of the writ on them.

Bill by the United States against M. J. Elliott and others to restrain a conspiracy to obstruct and destroy interstate commerce in violation of Act July 2, 1890 (26 Stat. 209). A preliminary injunction was granted. 62 Fed. 801. Defendants demurred to the bill. Demurrer overruled.

Wm. H. Clopton, U. S. Atty.
W. W. Erwin, S. S. Gregory, and W. A. Shumaker, for defendants.

PHILIPS, District Judge (orally). This case was submitted yesterday on the demurrer filed to the bill by certain of the defendants. The district attorney submitted the same on the pleadings; and the defendants, on the pleadings and an extensive brief. This suit grew out of the recent "strike," and the bill was filed on behalf of the United States, by the district attorney, under direction of the attorney general of the United States, to enjoin the defendants from the consummation of an organized conspiracy, which threatened to obstruct and was impeding the passage of the United States mails, and interfering with interstate commerce. The demurrer, of course, admits all the material allegations of the bill; that is, all facts which are well pleaded. These averments may be summarized as follows: It is charged, in substance, that the defendants have combined and confederated together to prevent the several railroads named in the bill,—being about all of the many important roads coming into the city of St. Louis, Mo.,—which are engaged in carrying the United States mails and in interstate commerce, carrying passengers and freights, from conducting their customary business in transporting passengers and freights between and among the different states of the Union, and foreign countries. It is further charged that said defendants have combined and conspired to induce persons in the employ of said railroads to leave the service of their respective companies, and to prevent the companies from securing the services of other persons in the place of those induced to quit, the object of such conspiracy being to prevent said railroad companies from hauling cars which are extensively used in the necessary transaction of their business in interstate commerce. The bill charges the commission of divers and sundry acts by the alleged conspirators in furtherance of the objects of the confederation. Among other things, it is alleged that certain of the defendants, under the leadership of one Debs, have issued orders and directions to persons in the employ of of said railroads to act subject to their direction, whereby said employés have been commanded and required to cease from operating the respective railroads. It is further charged that certain of said defendants have threatened to tie up the entire operations of trains of such of said companies as refuse to accede to certain demands made upon them by the leaders of the conspiracy, and that it is the purpose and object of the defendants to so obstruct and crip-

ple the business of said roads as to prevent them from performing their duties and functions as common carriers of freights and passengers among the several states through which the several lines of said roads pass. It is further alleged that it is among the objects and plans of said conspirators to control the interstate commerce between the city of St. Louis and points in other states, and thereby prevent the owners of said roads from exercising any independent control thereof in the transaction of interstate commerce. The bill further sets up, what is quite an historic fact in commercial circles, that the city of St. Louis is a large live-stock market for the sale and slaughter of cattle and hogs, and the preparation of the same for food, and is also a large manufacturing center, from which point these food supplies and manufactured articles are distributed to various points throughout the United States, and other necessaries of life, which have become essential to the commerce, growth, and development of the country, and for its domestic life, and that the aforesaid interference with the transportation of these supplies is a great public detriment, not only to said city, of 600,000 people, but to all the people of the various states reached by the exertions and efforts of this distributing point, who, by the course of business, have become largely dependent upon this source of supply. The object of the bill is to have these parties, and their aiders and abettors, enjoined and restrained from the further prosecution of their unlawful purpose and dangerous conspiracy.

The demurrer raises the question of the jurisdiction of this court over the subject-matter, and the right of the United States to bring such suit in equity; and various other suggestions are made, of minor importance. As recited in the temporary order of injunction made by Judge THAYER, the suit was instituted upon the authority of the attorney general of the United States, and the bill is properly sworn to, in the usual form. I do not propose to go into any extended discussion of the many various questions discussed by counsel in the brief.

It is a fact of supreme importance, to be stated at the very threshold of this discussion, that the regulation and control of commerce among the states of the Union, and with foreign nations, is, by the federal constitution, reposed exclusively in the congress of the United States. The felt necessity of this federal jurisdiction was the one great impelling cause that led to the formation of the federal Union, and the adoption of the federal constitution. As early as 1778 this question was pressed upon the consideration of congress by a memorial from the state of New Jersey, and in 1781 Dr. Witherspoon, one of the statesmen of that day, presented a resolution which declared that "it is indispensably necessary that the United States, in congress assembled, should be vested with a right of superintending the commercial regulations of every state, that none may take place that shall be partial, or contrary to the common interests." And in 1786 Virginia adopted a resolution appointing commissioners to meet with like commissioners from other states, and the resolution to that effect, formulated by Mr. Madison, recited in the preamble that "Whereas, the relative situation of the United States has

been found on trial to require uniformity in their commercial regulations," etc. That great jurist, Chief Justice Marshall, in Brown v. Maryland, 12 Wheat. 445, most aptly presents this matter, as follows:

"The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view of their own interests, and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties, but the inability of the federal government to enforce them had become so apparent as to render that power, in a great degree, useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the federal government contributed more to that great Revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the states. To construe the power so as to impair its efficacy would tend to defeat an object in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity." "What, then, is the just extent of a power to regulate commerce with foreign nations, and among the several states?" "The power is coextensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, but must enter its interior." "Commerce is intercourse. One of its most ordinary ingredients is traffic."

In the passion of the hour, we are apt to forget the pit from which we were dug, and the rock of permanency upon which our feet were planted, by the wise and patriotic men who constructed the fabric of our government. The power to regulate commerce among the states carries with it, as the supreme court has repeatedly held, the power to protect and defend.

On July 2, 1890, congress passed the law entitled "An act to protect trade and commerce against unlawful restraints and monopolies," section 1 of which is as follows: "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal." It may be conceded that the controlling, objective point, in the mind of congress, in enacting this statute, was to suppress what are known as "trusts" and "monopolies." But, like a great many other enactments, the statute is made so comprehensive and far-reaching in its express terms as to extend to like incidents and acts clearly within the expression and spirit of the law. It declares that every act, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the states, or with foreign nations, is forbidden. Therefore, any combination or confederation among two or more persons, in restraint of trade or commerce, comes within the express letter of the statute. The term "restraint of commerce" was used in its ordinary, business understanding and acceptation. Among the recognized meanings of the word are "prohibition of action; holding or pressing back from action; hindrance; confinement; restriction." It is a restriction or hindrance created by the application of external force. It is a vis major applied directly and effectually to carriers of

interstate commerce, which prevents them from operation. Olivera v. Insurance Co., 3 Wheat. 193. It was perfectly competent for congress, in the exercise of its constitutional jurisdiction of the whole subject of such commerce, to pass laws to prevent and suppress unlawful conspiracies and combinations to interfere with the operation of such commerce. Accordingly, section 4 of said act provides that:

"The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited." "When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

It was pursuant to this statute, inter alia, that Judge THAYER issued the temporary restraining order in this case. I am unable to perceive the force of the argument against the power of congress to authorize such civil proceedings in equity to suppress and restrain combinations and conspiracies to accomplish the obstruction and destruction of interstate commerce and trade before it is accomplished. It was just as competent for congress to provide this civil remedy of prevention as it was to provide for punishment in a criminal proceeding for the unlawful conspiracy entered upon or consummated.

It is urged by counsel for defendants that courts of equity will not interpose by injunction to prevent the commission of an act which, when done, would be a crime penally punishable. This is an "old saw." It is a general rule of equity jurisprudence that courts of chancery will not interpose where there is an adequate remedy at law, nor will they ordinarily interpose to prevent the commission of a crime. A well and long established exception to this rule is that where parties threaten to commit a criminal offense, which, if executed against private property, would destroy it, and occasion irreparable injury to the owner, and especially where such destruction would occasion a multiplicity of suits to redress the wrong if committed, courts of equity may interpose by injunction to restrain the threatened injury. The law, it does seem to me, would be very imperfect, and indeed impotent, if a number of irresponsible men could conspire and confederate together to destroy my property, to demolish or burn down my house, that I should be remitted alone to the criminal statutes for their prosecution after my property was destroyed. Most generally, such lawbreakers who engage in such conspiracies are a lot of professional agitators. They have no property to respond in damages. Their tongues are their principal stock in trade; and inasmuch as imprisonment for debt is abolished, and cruel and unusual punishments are prohibited, an execution would be quite unavailing. It certainly presents a case that most strongly appeals to the strong arm of a court of equity to reach forth to pre-